

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: ROBERT O. TARVIN and
CYNTHIA D. TARVIN,

Debtors.

Case No. 04-76324
Chapter 13
Hon. Marci B. McIvor

**OPINION GRANTING IN PART AND DENYING IN PART TRUSTEE'S OBJECTION
TO FIRST APPLICATION FOR ORDER APPROVING PRE-CONFIRMATION
ATTORNEY FEES**

This matter is before the Court on the Trustee's Objection to First Application for Order Approving Pre-Confirmation Attorney Fees. The Trustee objects, claiming that Counsel's hourly rate is too high, specific time entries as excessive, unreasonable or duplicative, professional fees are sought for work that was ministerial or clerical in nature, and fees for preparation of the fee application should be limited to 5% of the total amount awarded. For the reasons stated in this Opinion, the Court grants in part and denies in part the Objections and awards Counsel total fees of \$2,594.00 and costs of \$74.57, for a total of \$2,668.67

Jurisdiction

This is a core proceeding under 28 U.S.C. § 157 (b)(2)(A) over which this Court has jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(a).

Statement of Facts

Debtor filed a voluntary Chapter 13 bankruptcy petition on December 28, 2004. A

proposed Chapter 13 plan was filed on that same day. A confirmation hearing was set for March 31, 2005 but was adjourned to May 5, 2005. Pursuant to the Order Adjourning Hearing, Debtor was required to be 100% current on their plan payments by April 28, 2005 and to file an amended petition and petition cover sheet by April 25, 2005, or face dismissal “without further notice or hearing.” Debtor did not comply with the Order, and the case was dismissed on May 2, 2005.

On May 10, 2005, Debtor’s Counsel filed a First Application for Order Approving Pre Confirmation Attorney Fees. The Application seeks total fees of \$2,654.00 and costs of \$74.67. On May 23, 2005, the Trustee filed Objections to the fee application. The Trustee asserts that Counsel’s hourly rate is too high, specific time entries are excessive, unreasonable or duplicative work, professional fees are sought for work that was ministerial or clerical in nature, and fees for preparation of the fee application should be limited to 5% of the total amount awarded.

Standard for Fee Awards in Bankruptcy

A court has the duty to review all fee applications, regardless of whether an objection has been filed, in order to protect the assets of the estate for the benefit of the creditors. 11 U.S.C. § 330(a)(2); *In re Bush*, 131 B.R. 364, 365 (Bankr. W.D. Mich. 1991).

A bankruptcy court has broad discretion in determining fee awards. *Manufacturers Nat’l Bank v. Auto Specialities Mfg. Co. (In re Auto Specialities Mfg. Co.)*, 18 F.3d 358 (6th Cir. 1994).

Section 330(a)(1) of the Bankruptcy Code provides that the court may award an

attorney reasonable compensation for actual, necessary services rendered. 11 U.S.C. §

330(a)(1). Section 330(a) provides, in pertinent part:

(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, a professional person employed under section 327 or 1103 --

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, professional person, or attorney and by any para-professional personal employed by any such person; and

(B) reimbursement for actual, necessary expenses.

(2) The court may, on its own motion or on the motion of the United States Trustee, the United States Trustee for the District or Region, the trustee for the estate, or any other party in interest, award compensation that is less than the amount of compensation that is requested.

(3) In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant facts, including

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and

(E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

(4)(A) Except as provided in subparagraph (B), the court shall not allow compensation for --

(i) unnecessary duplication of services; or

(ii) services that were not --

(I) reasonably likely to benefit the debtor's estate, or;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a) (emphasis added).

To summarize, 11 U.S.C. § 330(a) requires that requested fees must meet three conditions. The fees must be: (1) reasonable; (2) incurred for services that were actually rendered; and (3) incurred for services that were necessary. *In re Allied Computer Repair, Inc.*, 202 B.R. 877 (Bankr. W.D. Ky. 1996).

The Sixth Circuit has adopted a "lodestar method" for actually applying the requirements set forth in 11 U.S.C. § 330. *In re Boddy*, 950 F.2d 334, 337 (6th Cir. 1991).

The lodestar method requires that the court first determine a reasonable hourly rate, and then multiply the rate times the reasonable number of hours expended to perform actual, necessary services. The Court may "then determine whether a global reduction or enhancement of the fees is in order." *In re Atwell*, 148 B.R. 483, 492-93 (W.D. Ky. 1993).

The ability to review fee applications in the context of each individual case "permits the Court to balance the following two competing interests: (1) rewarding the attorney practicing bankruptcy on a level commensurate with other areas of practice; against (2) the need to encourage cost-conscious administration." *Allied Computer Repair, Inc.*, 202 B.R. at 884-85. The burden of proof is upon the applicant to justify the requested fees. *In re Hamilton Hardware Co., Inc.*, 11 B.R. 326 (Bankr. E.D. Mich. 1981).

Objections to Fees

1. Hourly Rate

The Trustee objects to the hourly rate charged by Debtor's attorney asserting that the rate is excessive. (Trustee's Objection ¶ 3,4). Bankruptcy attorneys are generally entitled to an hourly fee in line with the prevailing market rates in the community. *In re ACT Manufacturing*, 281 B.R. 468, 486 (Bankr. D. Mass. 2002) ("[T]he Court should apply the rate customarily charged for similar services in the locality..."). The Court may, itself, determine the prevailing market rate in the community and thus evaluate the reasonableness of the attorneys' hourly rates. *In re Computer Learning Centers*, 285 B.R. 191, 227 (Bankr. E.D. Va. 2002). "The court is in an excellent position to evaluate the prevailing market rate for attorney's fees by virtue of the innumerable fee applications presented to [it] . . . The very number of applications provides an exceptional view of the breadth and depth of the legal community and the fees charged . . ." *Id.*

In this case, Debtor's Counsel charges \$200 per hour. While that hourly rate is not inherently unreasonable for an experienced and competent lawyer in the Chapter 13 context, it is a high rate and carries with it a responsibility to be extremely efficient. Having reviewed the entire fee application, the Court finds that the services provided by Debtor's Counsel in this case were warranted and were provided in an efficient manner.

2. Reasonableness of Specific Time Entries

The Trustee objects to specific time entries on the application as unreasonable, excessive, or duplicative. (Trustee's Objections ¶¶ 2 (a), (c), (e), (f), (g), (h), (i)). Having

reviewed the entries to which the Trustee objects, the Court finds that the entries are reasonable, with the exception of the objection found in paragraph (i).

In paragraph (i), the Trustee objects to the Debtor's charge of \$60.00 (.3 hours) for preparing for the confirmation hearing. This Court finds that charge unreasonable in light of the fact that Debtor's case had been dismissed on May 2, 2005. Therefore, this Court is disallowing \$60.00 of Debtor's fees.

3. Clerical/Ministerial Services

The Trustee objects to several entries in the fee application on the ground that the services provided were clerical in nature and, therefore, non-compensable as overhead. (Trustee's Objections ¶ 2 (b) and (d)). The Trustee relies on *In re Woodward East Project, Inc.*, 195 B.R. 372 (Bankr. E.D. Mich. 1996); *In re Pinkins*, 213 B.R. 818 (Bankr. E.D. Mich. 1997) and *In re Bass*, 227 B.R. 103 (Bankr. E.D. Mich. 1998) in support of his position.

The Court agrees that attorneys may not bill clients for clerical tasks because those tasks are considered a part of a law firm's overhead. Clerical tasks include filing motions, mailing letters, typing (*Woodward East*, 195 B.R. at 377), opening files, organizing paperwork, entering client information into the system, filing papers, and copying. (*Pinkins*, 213 B.R. at 107).

Having specifically reviewed the entries to which the Trustee objects, the Court finds that the entries are appropriate and the Trustee's Objections are denied.

4. Time Billed for Preparation of Fee Application

Time spent generating fee applications is generally limited to 5% of the total fees requested. "Absent exceptional circumstances, fees for the preparation of fee applications should be limited to 5% of the total fees requested." *In re Bass*, 227 B.R. 103, 109 (Bankr. E.D. Mich. 1998). In this case, Counsel for Debtor seeks \$100 for preparation of the fee application. The amount Counsel for Debtor seeks is less than 5% of the total fees awarded, appears to be reasonable, and is therefore allowed.

Conclusion

For the reasons stated above, the Court grants in part and denies in part Trustee's Objection to First Application for Order Approving Pre-Confirmation Attorney Fees. Counsel is awarded total fees of \$2,594.00 and costs of \$74.57, for a total of \$2,668.67

/s/

Marci B. McIvor
United States Bankruptcy Judge

Dated: June 23, 2005
Detroit, Michigan

cc: David Ruskin
William Johnson